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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-687

NORMA FRANCES RAOUL CLARK and
ANN ELIZABETH RAOUL,
Petitioners,

vs.

AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHATTANOOGA,
Respondent.

REPLY AND SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONERS

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December 30, 1975

REPLY AND SUPPLEMENTAL
BRIEF ON BEHALF OF PETITIONERS

Respondent's opposition brief contends that since the claim of constitutional right was first asserted in a petition for rehearing in the Supreme Court of Tennessee, it came too late (Respondent's brief, pages 2 and 13-15). As shown by the opinion of the Tennessee Supreme Court on the petition to rehear before that court (76A-77A), it passed on the merits of the petitioners' constitutional law argument by ruling that its decision in Teeters v. Currey, 518 S.W. 2d 512 (1975) "had no relevance to the issues in this controversy."

Petitioners had relied upon Teeters in their petition for a writ of certiorari to the Tennessee Supreme Court, which had been previously denied (74A-75A). The first opportunity to raise the constitutional equal protection of the law question inherent in the refusal to apply Teeters to the subject case occurred in connection with the petition to rehear to the Tennessee Supreme Court.

By way of a supplemental brief pursuant to Rule 24(5), the attention of this Court is called to Woodruff v. Tomlin, 511 F. 2d 1019 (CA 6, 1975). In that case the Court applied the discovery rule in Teeters in a legal malpractice action, holding that under Tennessee law,

the cause of action accrued when the client discovered or should reasonably have discovered the malpractice by his counsel, rather than at the time of the negligent act or omission, as the defendant attorney had contended.

In a later recent decision of the Tennessee Supreme Court, Watts v. Putnam County, 525 S.W. 2d 488 (1975), that court referred again to Teeters (page 491) and later commented (page 495) that the discovery rule did apply in malpractice actions "against architects and attorneys."

Subsequent to Teeters, the Tennessee legislature had adopted the "Malpractice Review Board and Claims Act of 1975" (T.C.A. 23-3401 through 23-3421) dealing with the vexing problem of medical malpractice cases. T.C.A. 23-3415 contained therein provides a new statute of limitations in medical malpractice cases, partially perpetuating the discovery rule, but cutting it off three years after the negligent act or omission except in cases of fraudulent concealment, or where a foreign object has been negligently left in the patient's body.*

*It is understood that this act has been declared unconstitutional by the Chancery Court of Davidson County, Tennessee, and that this decision is now on appeal to the higher courts.

The Tennessee Supreme Court stated in Watts (pp. 494-495):

> "We note with concern the recent tendency of special interest groups to promote the passage of particularized statutes of limitations in the area of tort law. We do not impugn the motives of any such group, but we are concerned with the fundamental fairness involved in the imposition of differing periods of limitation on different individuals and groups. For example, Tennessee now has a three-year statute of limitations on medical malpractice, a four-year statute governing malpractice actions against architects, and a one-year statute governing actions against lawyers; all complicated by the fact that the discovery rule no longer applies to medical malpractice actions but does apply against architects and attorneys. All of this points to the urgency of the need for a comprehensive revision of all statutes of limitations in Tennessee to the end that uniform periods of limitation be established and applied."

Petitioners respectfully insist that the equal protection clause in the Fourteenth Amendment denies a state the right, by either legislative act or judicial legislation, to selectively grant the benefits of the discovery rule to claimants in certain classes of cases while withholding same in others. It is permissible under the equal protection clause that statutes of limitations may vary in length, depending on

the type cause of action. It is not constitutionally permissible, however, to calculate the time period involved from the date of discovery of the wrong or the date when it reasonably should have been discovered in one situation, and not in all others.

It is particularly constitutionally impermissible to make such differentiation between a claim for monetary loss arising out of malpractice by a paid professional trustee, as here, and such claim arising out of malpractice by a hired attorney. There can be no possible equitable or logical basis for such discrimination between equivalent claims against fiduciaries.

Respectfully submitted,

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December 30, 1975